

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA, :

Plaintiff, : Case No. 3:09-cr-95
3:11-cv-340

vs. : JUDGE WALTER HERBERT RICE

LEVI LEE, :

Defendant :

DECISION AND ENTRY ADOPTING UNITED STATES MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS ON MOTION FOR RECONSIDERATION (DOC. #87); OVERRULING DEFENDANT'S MOTION FOR RECONSIDERATION, NEW TRIAL AND TO ALTER AND AMEND THE JUDGMENT UNDER FED. R. CIV. P. 59 FROM THE DENIAL OF MOTION UNDER 28 U.S.C. § 2255 (DOC. #86); ADOPTING UNITED STATES MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION OF REQUEST TO EXPAND CERTIFICATE OF APPEALABILITY (DOC. #91); OVERRULING DEFENDANT'S REQUEST FOR CERTIFICATE OF APPEALABILITY FOR ADDITIONAL ISSUE (DOC. #89)

Based on the reasoning and citations of authority set forth by United States Magistrate Judge Michael R. Merz, in his Report and Recommendations, filed January 30, 2012 (Doc. #87), to which no objections were filed, this Court adopts said judicial filing in its entirety, and overrules Defendant's Motion for Reconsideration, New Trial and to Alter and Amend the Judgment Under Fed. R. Civ. P. 59 (Doc. #86).

Likewise, based on the reasoning and citations of authority set forth in the Magistrate Judge's February 15, 2012, Report and Recommendation of Request to

Expand Certificate of Appealability (Doc. #91), the Court adopts said judicial filing in its entirety, and overrules Defendant's request for a certificate of appealability as to the recommended disposition of the first ground for relief. (Doc. #89). The Court notes that Defendant's attorney has since conceded that this issue has been waived, and that he must seek a ruling from the Sixth Circuit excusing him from default. See Doc. #92.

Date: September 28, 2012



WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE